

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 17-CR-00127(ARR)

-against-

: United States Courthouse
: Brooklyn, New York

VINCENT ASARO,

: Tuesday, June 27, 2017
: 10:30 a.m.

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE ALLYNE R. ROSS
UNITED STATES SENIOR DISTRICT JUDGE

A P P E A R A N C E S:

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1 (In open court.)

2 THE COURTROOM DEPUTY: United States of America
3 against Vincent Asaro, docket number CR-17-127.

4 Counsel, please state your name for the record.

5 MS. ARGENTIERI: Nicole Argentieri and Keith Edelman
6 for the United States. Good morning, Judge.

7 THE COURT: Good morning.

8 MS. MACEDONIO: Good morning, Your Honor. Elizabeth
9 Macedonio for Mr. Asaro.

10 THE COURT: Good morning.

11 THE COURTROOM DEPUTY: Do you want to state your
12 name for the record?

13 MR. EPSTEIN: Yes. Lloyd Epstein, Your Honor. I
14 think the Court asked me to come here to speak with Mr. Asaro.

15 THE COURT: I did.

16 MR. EPSTEIN: I spoke to him already and I am
17 prepared to place on the record the content of our
18 conversation.

19 THE COURT: Okay. I think we are going to give him
20 another opportunity to talk to you after I speak with him.

21 MR. EPSTEIN: Okay.

22 THE COURT: Well, let me ask you this: Is it
23 Mr. Asaro's view that he would like to continue to be
24 represented by Ms. Macedonio at this point in time?

25 MR. EPSTEIN: Yes.

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1 THE COURT: Okay.

2 Mr. Asaro.

3 THE DEFENDANT: Yes.

4 THE COURT: Could we push you close to a microphone
5 so I could hear everything you say?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. Now, I know that Ms. Macedonio
8 has been representing you in this proceeding, and I gather
9 that you wish to continue to have her represent you.

10 As I believe you already know, Ms. Macedonio is also
11 representing Ronald Giallanzo who is currently being
12 prosecuted in this court in another proceeding before another
13 judge. According to the government's charges, both you and
14 Mr. Giallanzo are members of the Bonanno organized crime
15 family and Mr. Giallanzo is also a blood relative. You are
16 his uncle and he is your nephew, as I understand it.

17 Now, because Ms. Macedonio represents Mr. Giallanzo,
18 she owes him a duty of loyalty. As a result of that duty of
19 loyalty, she may not be able to do what is in your best
20 interest in the case before me. This means that she has, at
21 least, a potential and, quite possibly, an actual conflict of
22 interest in her representation of you in this proceeding
23 before me.

24 I want you to know that you have a right to counsel
25 who is free from any possible conflict of interest, who will

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1 see to it that your interests and only your interests are
2 protected. So to help you understand the importance of this
3 right, I have asked you already to consult with independent
4 counsel, Mr. Epstein, and I am going to ask you to do that
5 again after I have spoken with you so that you can reach an
6 informed decision about how you want to proceed in this case.

7 I also want to make clear to you that in my view a
8 defendant is always better off represented by counsel who is
9 wholly independent of anyone with whom there may be a conflict
10 of interest. And obviously, if you chose to do that, I would
11 appoint another attorney to represent you in this case.

12 So what I am going to do now is tell you a little
13 bit about some of the risks that are likely to come up when
14 you are represented by a lawyer who, like Ms. Macedonio, has
15 divided loyalties because of other representation. I cannot
16 see what all of those risks are, no one can, but I will tell
17 you at least one major one that I am cognizant of. This is a
18 very serious matter for you. If you do not understand me or
19 if you have any doubt at all as to what I mean, I want you to
20 stop me and I will reword or express myself differently until
21 you understand everything that I say. All right?

22 THE DEFENDANT: Okay.

23 THE COURT: And then after I am finished, I will
24 give you some time to go over in your own mind what I have
25 spoken about and to talk further with Mr. Epstein. And then

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1 after you have had plenty of time to consider, and only when
2 you tell me you are ready, I will ask you to tell me what your
3 decision is. When you do that, I will ask you to tell me in
4 your own words what you understand the potential conflict of
5 interest to be if you have Ms. Macedonio continue to represent
6 you in this proceeding.

7 And then if you decide that despite that you wish to
8 run that risk and other potential risks and you want to give
9 up your right to a lawyer who is under no conflict of
10 interest, you may do that provided that I am satisfied that
11 you are acting of your own free will, without pressure or
12 coercion by anyone, and that you have made a knowing and
13 intelligent decision. All right?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Dennis, would you please swear
16 Mr. Asaro?

17 (Defendant sworn.)

18 THE COURTROOM DEPUTY: Please state your name for
19 the record?

20 THE DEFENDANT: Vincent Asaro.

21 THE COURTROOM DEPUTY: Thank you.

22 THE COURT: Mr. Asaro, do you understand that having
23 been sworn, now that you are under oath, your answers to my
24 questions would be subject to another prosecution for perjury
25 or false statement if you did not answer them truthfully?

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1 THE DEFENDANT: Right.

2 THE COURT: Okay. How old are you?

3 THE DEFENDANT: 82.

4 THE COURT: Okay. And how far did you go in school?

5 THE DEFENDANT: I quit when I was 16.

6 THE COURT: Okay, so you were in high school?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. Had you had about a year of high
9 school?

10 THE DEFENDANT: Excuse me, ma'am?

11 THE COURT: Did you complete a year of high school
12 or not yet?

13 THE DEFENDANT: It's so many years ago, I'm not --

14 THE COURT: I understand.

15 In the last twenty-four hours have you taken any
16 drugs or medicine or pills of any kind or drunk any alcoholic
17 beverage?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. And what have you taken?

20 THE DEFENDANT: Metoprolol -- I take a lot of drugs,
21 Your Honor. I can't remember. Bis -- Bisoprolol for the
22 heart.

23 THE COURT: Right.

24 THE DEFENDANT: Liver disease -- I take about 10, 12
25 pills a day.

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1 THE COURT: Okay. Let me ask you this: Are either
2 the side effects of those pills or the effects of the ailments
3 that the pills are used to treat in any way affecting your
4 ability to understand what is going on in this proceeding or
5 to make up your mind about what you want to do?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Okay.

8 Are you under treatment by a doctor or a
9 psychiatrist?

10 THE DEFENDANT: Well, just the medication that I am
11 taking.

12 THE COURT: Okay, so just a physician, not a
13 psychiatrist?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. And it is the physician who has
16 prescribed the medication that you have told us about?

17 THE DEFENDANT: It was my heart doctor. I had two
18 triple bypasses.

19 THE COURT: Right, okay. And I think you told us
20 that your physical conditions are not interfering with your
21 ability to understand or your judgment?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Okay. Is your mind clear now?

24 THE DEFENDANT: Excuse me?

25 THE COURT: I'm sorry, is your mind clear now?

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1 THE DEFENDANT: Yes, yes.

2 THE COURT: You you understand what is going on in
3 this proceeding?

4 THE DEFENDANT: Yes.

5 THE COURT: Now, I know you have had some prior
6 experience with the criminal justice system, is that correct?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: I know there was a proceeding before me.
9 Have there been other proceedings where you have
10 either been a defendant or a witness?

11 THE DEFENDANT: In years -- years ago?

12 THE COURT: Years ago?

13 THE DEFENDANT: Yeah.

14 THE COURT: Okay. Has anyone ever made any promise
15 or threat to you that has influenced you in your decision to
16 have Ms. Macedonio represent you in this case?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Okay.

19 Ms. Macedonio.

20 MS. MACEDONIO: Yes, Your Honor.

21 THE COURT: Did you speak with your client regarding
22 his waiver of right to conflict-free counsel?

23 MS. MACEDONIO: I have, Your Honor.

24 THE COURT: Okay. Have you done that on a number of
25 occasions?

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1 MS. MACEDONIO: No, it hasn't been raised until most
2 recently, but I have spoken to him about it.

3 THE COURT: Have you spoken to him thoroughly?

4 MS. MACEDONIO: Yes.

5 THE COURT: Are you satisfied that he understands
6 it?

7 MS. MACEDONIO: Yes, I am.

8 THE COURT: Okay. And what is your view with
9 respect to whether or not there actually exists a conflict of
10 interest as a result of your representation of Mr. Giallanzo?

11 MS. MACEDONIO: I do not believe there is any
12 conflict of interest that is the result of my representation
13 of Mr. Giallanzo.

14 THE COURT: Okay.

15 Mr. Asaro, now I am going to tell you about the risk
16 that I think that you are running by having Ms. Macedonio
17 represent you. I cannot really fully foresee all the risks or
18 problems that could arise, nobody can do that, but you should
19 understand that you may be inviting dangers that no one can
20 anticipate at this time and no one can tell you about at this
21 time.

22 As I explained, Ms. Macedonio, as Mr. Giallanzo's
23 lawyer, owes a duty of loyalty to him and this includes an
24 obligation to do nothing at all that would harm or incriminate
25 him or cast suspicion on him, whether or not refraining from

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1 doing that might be harmful to you.

2 Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. For example, it is possible that
5 it may be in your best interest to cooperate with the
6 government against Mr. Giallanzo in his proceeding in hopes of
7 securing a sentencing benefit in your case.

8 Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. But because Ms. Macedonio
11 represents Mr. Giallanzo, she would be prevented from seeking
12 to persuade you to do so because your cooperation, which may
13 be in your best interest, would be harmful to the interests of
14 Mr. Giallanzo.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: She actually would be ethically barred
18 from trying to persuade you to pursue such a strategy.

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Okay. And do you understand that what I
22 have just said is strictly by way of example, other things
23 could well come up that would make it much better for you if
24 you had a lawyer who has solely your interests in mind?

25 THE DEFENDANT: Yes, I understand.

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1 THE COURT: Okay. Have you fully understood
2 everything that I have said?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. Do you understand that you may be
5 running a serious risk by continuing with her representation?

6 THE DEFENDANT: Yes, I understand.

7 THE COURT: Okay. And do you understand that if you
8 choose to continue to have her represent you, you cannot
9 complain about it later, you could not argue that
10 Ms. Macedonio failed to provide you with effective assistance
11 of counsel in your case because she labored under the conflict
12 of interest? Do you understand that?

13 THE DEFENDANT: I understand.

14 THE COURT: Do you have any questions at all that
15 you want to ask me?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Okay. So I want you to think seriously
18 about what I have just said. Speak further with Mr. Epstein
19 and discuss all of that again with him, and when you have done
20 that and when you have made up your mind and you are ready to
21 tell me what your decision is, we will resume this proceeding
22 and I will ask you to tell me.

23 But, again, remember I am going to ask you to
24 explain in your own words what type of risk you think you may
25 be running by having an attorney who is saddled by the

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1 conflict of dual representation. Okay?

2 THE DEFENDANT: Okay.

3 THE COURT: So, Mr. Epstein, I do not know if you
4 want to go in the back.

5 MR. EPSTEIN: Yes, I think that is probably the
6 best.

7 THE COURT: Go ahead, we will wait. And whatever
8 time you want, you just let us know.

9 (Mr. Epstein and the defendant exit the courtroom.)

10 (Pause in the proceedings.)

11 MR. EPSTEIN: I think we're ready.

12 THE COURT: Okay.

13 (Defendant re-enters the courtroom.)

14 THE COURT: Mr. Asaro, have you had a full
15 opportunity to discuss with Mr. Epstein what you want to do in
16 this case with respect to representation?

17 THE DEFENDANT: Yes, I have, Your Honor.

18 THE COURT: Okay.

19 Mr. Epstein, are you satisfied that Mr. Asaro fully
20 understands the situation?

21 MR. EPSTEIN: Yes.

22 THE COURT: And, Mr. Asaro, what is it that you want
23 to do?

24 THE DEFENDANT: I want to stay with Ms. Macedonio.
25 I've used her before. I was more than satisfied with her

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1 performance, and I feel she has the best interests at heart
2 for me.

3 Also I'd like to say, Your Honor, I would never
4 cooperate, not only against my nephew. I would never
5 cooperate against anyone. That's it.

6 THE COURT: Okay. And I take it that that's why you
7 think that, for example, the potential danger that I expressed
8 to you, that you are not in any way affected by that by
9 continuing to have Ms. Macedonio represent you?

10 THE DEFENDANT: Right.

11 THE COURT: Okay.

12 Well, I make a finding that Mr. Asaro's waiver of
13 conflict-free counsel is knowing and voluntary and
14 intelligent, and I will accept that waiver.

15 THE DEFENDANT: Thank you, Your Honor.

16 THE COURT: Let me just ask, Ms. Argentieri, is
17 there anything that I neglected in that?

18 MS. ARGENTIERI: No, Judge.

19 THE COURT: Okay.

20 Ms. Macedonio, what does your client wish to do?

21 MS. MACEDONIO: My client wishes to --

22 THE COURT: Thank you very much for your service,
23 Mr. Epstein.

24 MR. EPSTEIN: You're welcome.

25 (Lloyd Epstein, Esq. exits the courtroom.)

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1 MS. MACEDONIO: -- withdraw his previous plea of not
2 guilty and enter guilty pursuant to a written plea agreement
3 with the government.

4 THE COURT: Okay.

5 Mr. Asaro --

6 THE DEFENDANT: Yes.

7 THE COURT: -- before accepting your waiver of
8 indictment and guilty plea, there are many questions that I
9 have to ask you and many things that I have to explain to you.
10 It is very important that you understand everything that I ask
11 and everything I explain. So if there is anything at all that
12 you do not fully understand, just stop me and I will express
13 myself differently until you do understand it.

14 All right?

15 THE DEFENDANT: Yes.

16 THE COURT: Dennis, would you please swear
17 Mr. Asaro?

18 THE COURTROOM DEPUTY: Yes.

19 (Defendant sworn.)

20 THE COURTROOM DEPUTY: Please state your name for
21 the record.

22 THE DEFENDANT: Vincent Asaro.

23 THE COURTROOM DEPUTY: Thank you.

24 THE COURT: Again, Mr. Asaro, do you understand that
25 having been sworn, now that you are under oath, your answers

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1 would be subject to another prosecution for perjury to a false
2 statement if you did not answer truthfully?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. Now, I believe you told me you
5 were 82 years old, is that correct?

6 THE DEFENDANT: 82, yes.

7 THE COURT: 82, okay. And we have discussed your
8 schooling, that you left school at approximately the age of
9 16?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. We have also discussed the fact
12 that you are on a number of medications for a number of health
13 problems, and let me simply find out, again, from you, are
14 either any of the medications that you are taking or the side
15 effects from those medications or the underlying physical
16 conditions that have caused you to take those medications
17 affected your ability to understand the proceeding or your
18 ability to make a choice about how you want to proceed in the
19 proceeding?

20 THE DEFENDANT: Yes, yes.

21 THE COURT: Have they affected it?

22 THE DEFENDANT: No, no.

23 THE COURT: Oh, okay.

24 All right, and apart from those medications you have
25 not had any alcoholic beverages or narcotic drugs, is that

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1 right?

2 THE DEFENDANT: No.

3 THE COURT: Have you ever been hospitalized or
4 treated for narcotic addiction?

5 THE DEFENDANT: When I was 20, 21 I was in
6 Lexington, Kentucky.

7 THE COURT: And did you complete that program?

8 THE DEFENDANT: Yes.

9 THE COURT: Did you overcome the addiction?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Are you in any way feeling the effects
12 of that addiction now?

13 THE DEFENDANT: No.

14 THE COURT: Okay. Is your mind clear?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand what is going on?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you reviewed the charges in the
19 Superseding Information that the United States Attorney
20 proposes to file against you in this case?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: Did you discuss it with Ms. Macedonio?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand it?

25 THE DEFENDANT: Yes.

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1 THE COURT: Okay. I am going to go through it with
2 you again right now.

3 THE DEFENDANT: Yes.

4 THE COURT: If you have any question as to what any
5 aspect of it means, I want you to ask me or ask Ms. Macedonio.
6 All right?

7 THE DEFENDANT: Yes.

8 THE COURT: It charges that between approximately
9 April 1st and April 4th of 2012 in this district and elsewhere
10 you, together with others, knowingly and intentionally used
11 one or more facilities in interstate commerce with the intent
12 to promote or facilitate the promotion and carrying on of an
13 unlawful activity; and that that unlawful activity was arson
14 in violation of New York State law; and after you did that you
15 performed and attempted to perform a crime of violence,
16 specifically arson affecting interstate commerce in violation
17 of federal law.

18 Do you understand that charge?

19 THE DEFENDANT: Yes, Your Honor. The only -- the
20 only question I have, it was one other person. There weren't
21 others.

22 THE COURT: Okay. But it was one other person?

23 THE DEFENDANT: One other person, right.

24 THE COURT: Okay. Right now we are just
25 ascertaining that you understand what the charge is.

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1 THE DEFENDANT: Yes.

2 THE COURT: Okay. Do you understand that you have
3 the right under the Constitution of the United States to be
4 charged by an Indictment by a grand jury?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you understand that instead of an
7 Indictment, the United States Attorney proposes to bring this
8 charge against you simply by filing this piece of paper that
9 is called a Superseding Information with the Court, which
10 contains one charge, which is the charge that I just described
11 to you?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay. Do you understand that unless you
14 gave up your right to be indicted by a grand jury, you could
15 not be charged with this crime because it is a felony offense,
16 unless a grand jury determined that there was probable cause
17 to believe that you committed this crime? Do you understand
18 that?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. Do you understand that a grand
21 jury is composed of, at least, 16, but not more than 23
22 persons and that, at least, 12 grand jurors would have to
23 determine that there was probable cause to believe that you
24 committed this crime before you could be indicted for this
25 crime?

SAM

OCR

RMR

CRR

RPR

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1 THE DEFENDANT: Yes.

2 THE COURT: Okay. Do you understand that if the
3 prosecutor presented the case to the grand jury, the grand
4 jury might or might not indict you?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. And do you understand that if you
7 give up your right to indictment by a grand jury, this
8 prosecution will proceed against you simply by virtue of the
9 prosecutor filing this piece of paper, even though you had
10 never been indicted?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. Have you discussed the matter of
13 waiving your right to indictment by the grand jury with
14 Ms. Macedonio?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: Do you understand that right?

17 THE DEFENDANT: Yes.

18 THE COURT: Have any threats or promises been made
19 to induce you to give up that right?

20 THE DEFENDANT: No.

21 THE COURT: Do you want to give up that right and
22 proceed instead on this Information?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay.

25 Ms. Macedonio, do you know of any reason why your

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1 client should not waive indictment?

2 MS. MACEDONIO: I do not.

3 THE COURT: Okay. Have you an executed Waiver of
4 Indictment form down there?

5 MS. MACEDONIO: I think I handed it to you.

6 THE COURT: Oh, it is back in front of me, sorry.

7 Okay, I am going to hand down a Waiver of
8 Indictment.

9 Mr. Asaro, is that your signature on the Waiver of
10 Indictment?

11 THE DEFENDANT: Yes, it is, Your Honor.

12 THE COURT: Okay. Before you signed it, did you
13 read it? Did you read the document?

14 THE DEFENDANT: Yes.

15 THE COURT: Did you discuss it with Ms. Macedonio?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Do you understand it?

18 THE DEFENDANT: Yes.

19 THE COURT: The record should reflect that
20 Ms. Macedonio has also executed the waiver and I am witnessing
21 it and I make a finding that the waiver is knowingly and
22 intelligently and voluntarily made.

23 Ms. Macedonio, have you discussed the matter of
24 pleading guilty thoroughly with your client?

25 MS. MACEDONIO: I have, Your Honor.

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1 THE COURT: Does he understand the rights that he
2 would be waiving by pleading guilty?

3 MS. MACEDONIO: Yes, he does.

4 THE COURT: Is he capable of understanding the
5 nature of the proceedings?

6 MS. MACEDONIO: Yes, he is.

7 THE COURT: Do you have any doubt as to his
8 competence to plead at this time?

9 MS. MACEDONIO: No, I don't.

10 THE COURT: Have you advised him of the maximum
11 sentence and fine that may be imposed and discussed with him
12 the advisory sentencing guidelines and the other statutory
13 sentencing factors?

14 MS. MACEDONIO: I have, Your Honor.

15 THE COURT: Okay.

16 Mr. Asaro, have you had plenty of time to discuss
17 your case with Ms. Macedonio?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: Okay. And are you satisfied to have her
20 represent you in this proceeding?

21 THE DEFENDANT: Yes, I am.

22 THE COURT: Now, we have already reviewed the
23 Information that sets forth the charge against you, and as I
24 recall you fully understood the charge, is that correct?

25 THE DEFENDANT: Yes.

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1 THE COURT: Okay. Do you understand that you have
2 the right to plead not guilty to that charge?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: And if you did, under the Constitution
5 and under the laws of the United States you would be entitled
6 to a speedy and public trial by a jury with the assistance of
7 your attorney, Ms. Macedonio.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. And you would be entitled to have
11 her assistance throughout every aspect of the criminal
12 proceeding against you?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. At a trial, if you chose to go to
15 trial, you would be presumed to be innocent and the Government
16 would have to overcome that presumption and prove you guilty
17 by competent evidence beyond a reasonable doubt. You would
18 not have to prove that you were innocent. If the Government
19 were to fail to prove you guilty beyond a reasonable doubt,
20 the jury would have the duty to find you not guilty.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Okay. Now in the course of the trial,
24 the witnesses for the Government would have to come into court
25 and testify in your presence. Ms. Macedonio would have the

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1 right and opportunity to cross-examine the Government's
2 witnesses, to object to any evidence the Government offered,
3 and to offer evidence on your behalf. And in that connection
4 she would have the right to compel the attendance of witnesses
5 to testify on your behalf.

6 Do you understand all of that?

7 THE DEFENDANT: Yes, I understand.

8 THE COURT: Okay. At a trial, while you would have
9 the right to testify if you chose to do so, you could not be
10 required to testify. Under the Constitution of the United
11 States you cannot be compelled to incriminate yourself. You
12 cannot be required to say anything that would in any way
13 indicate your guilt of the crime with which you are charged.
14 If you chose not to testify, I would instruct the jury that
15 they could not hold that against you in any way.

16 Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. Now, if you plead guilty and your
19 guilty plea is accepted, you are going to be giving up your
20 constitutional right to a trial and all of the other rights
21 that I just discussed. There would be no further trial of any
22 kind and no right to appeal from a judgment of guilty. I
23 would simply enter a judgment of guilty on the basis of your
24 guilty plea.

25 Do you understand that?

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1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Also if you plead guilty, I am going to
3 have to ask you questions about what it was that you did in
4 order to satisfy myself that you actually are guilty of the
5 crime to which you seek to plead guilty. You will have to
6 answer my questions and acknowledge your guilt. And in doing
7 that, you are going to be giving up one of the rights that I
8 just described, which is the right not to say anything that
9 would in any way indicate your guilt.

10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. Are you willing to give up your
13 right to a trial and all the other rights that I have just
14 described?

15 THE DEFENDANT: Yes.

16 (Pause.)

17 THE COURT: Okay, turning to the last page of your
18 agreement with the government, which is Government Exhibit
19 Number 1, is that your signature on the agreement?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Okay. Before you signed it, did you
22 read it?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you discuss it with Ms. Macedonio?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand it?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Is there anything at all in the entire
4 written agreement that you do not fully understand?

5 THE DEFENDANT: No.

6 (Lindsay Gerdes, Esq. entered the courtroom.)

7 THE COURT: Do you understand that that written
8 agreement sets forth your whole agreement with the government
9 relating to your guilty plea in this case?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Okay. Do you know the longest prison
12 term that could be imposed upon your guilty plea under the
13 statute?

14 THE DEFENDANT: Twenty years.

15 THE COURT: That is right.

16 Do you understand that you would also be subject to
17 a term of supervised release of up to three years?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you know what a term of supervised
20 release is?

21 THE DEFENDANT: Yes.

22 THE COURT: So you understand that is a period of
23 time that you serve after you are released from prison; you
24 are not in prison, but there are many restrictions that are
25 placed on your liberty, so many I cannot not even begin to

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1 review all of them for you now?

2 THE DEFENDANT: I understand.

3 THE COURT: If you were to breach any of your
4 conditions of supervised release while you were out on
5 supervised release, you could be sent back to prison for up to
6 two years without any credit for any of the time that you may
7 have spent out on supervised release.

8 THE DEFENDANT: I understand.

9 THE COURT: Okay. Do you understand that under the
10 statute you could be fined up to \$250,000?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. Do you understand that you will
13 be required to make restitution in the full amount of each
14 victim's losses as I determine them?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay.

17 Finally, do you understand that I must impose a
18 special assessment, which is like a fine, of \$100?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay.

21 Now, the United States Sentencing Commission has
22 issued advisory sentencing guidelines that I must consider,
23 along with a great number of other statutory sentencing
24 factors in determining a sentence.

25 Have you and Ms. Macedonio discussed how all of

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1 these matters might affect your sentence?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that I am not going to
4 be able to determine your sentence until after the Probation
5 Department has prepared a pre-sentence report and you and
6 Ms. Macedonio and the government had an opportunity to review
7 the report and object to any of the findings made by the
8 probation officer? Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. Do you understand that if you are
11 sentenced to a prison term, you will be required to spend the
12 entire period of that prison term in prison?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay.

15 Ms. Argentieri --

16 MS. MACEDONIO: Your Honor --

17 THE COURT: -- can you estimate for me --

18 MS. MACEDONIO: Your Honor, let me just clarify the
19 last point. I understand what the Court is trying to express,
20 that there is no parole in the federal system and, therefore,
21 he would be required to serve his prison term, but there would
22 also be certain deductions for good time or he could be
23 designated to a halfway house at some point?

24 THE COURT: But I do not know that any of those
25 things are going to happen.

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1 MS. MACEDONIO: Correct.

2 THE COURT: I do not know if he is going to get good
3 time or I do not know if they will designate him to a halfway
4 house.

5 MS. MACEDONIO: Understood.

6 THE COURT: So that is why he has to be prepared
7 that the full-time could be prison time.

8 MS. MACEDONIO: May I have a moment, Your Honor?

9 THE COURT: Yes.

10 (Ms. Macedonio confers with the defendant.)

11 MS. MACEDONIO: Thank you, Your Honor.

12 THE COURT: Okay.

13 Ms. Argentieri, can you estimate for me the
14 anticipated advisory guideline range in the case?

15 MS. ARGENTIERI: Sure, Judge. As set out in the
16 agreement, we think that he is at a base offense level of 20
17 for the arson and travel act; with an aggravating role
18 adjustment of 2 and an impeding administration of justice
19 enhancement of 2 points, that puts him at a 24. Less 3 points
20 for acceptance of responsibility, which ends up being a
21 guidelines range of 41 to 51 months.

22 MS. MACEDONIO: Your Honor, if I may add, the
23 agreement that we have come to with the government does not
24 include stipulation to the guideline calculation. The parties
25 are not stipulating to that. That is simply the government's

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1 estimate as to what they believe.

2 THE COURT: That is fine. That is fine. In fact,
3 Mr. Asaro, it is an estimate. The government is guessing.
4 They could be wrong, but it could turn out that the advisory
5 guideline that applies in your case is even higher than what
6 the government is now estimating it will be. And it could
7 turn out that because of all those other statutory sentencing
8 factors I might choose to impose a sentence that is more
9 severe than the one called for by the advisory sentencing
10 guidelines; and if any of those things were to happen, you
11 would not be permitted to withdraw your guilty plea simply
12 because no one could tell you in advance what your sentence
13 would be.

14 Do you understand that?

15 (Ms. Macedonio confers with the defendant.)

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. And do you understand that in
18 paragraph four of the agreement you have agreed, among other
19 things, not to file an appeal or otherwise challenge your
20 conviction or sentence by habeas corpus petition or any other
21 provision of law if I impose a prison term of 46 months or
22 less? Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And do you also understand that the
25 government's agreement is conditioned upon the entry of guilty

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1 pleas and the acceptance of those pleas by John Gotti, as well
2 as Matthew Rullan; and if not everyone does that or if any of
3 the defendants subsequently seek to withdraw his guilty plea,
4 the United States Attorney's office has the sole discretion to
5 elect whether or not to void any or all of the pleas covered
6 by the agreements and proceed to trial? Do you understand
7 that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. And when that happens no
10 defendant is going to have the right to withdraw his plea in
11 any of those circumstances, it is just going to be up to the
12 government as to what it wishes to do.

13 THE DEFENDANT: Yes.

14 THE COURT: Okay.

15 Anything else?

16 MS. ARGENTIERI: Yes, Judge. Just two provisions I
17 wanted to highlight. Number one, the defendant is also
18 waiving any applicable statute of limitation --

19 THE COURT: Yes.

20 MS. ARGENTIERI: -- by pleading to this Information.
21 And number two, in paragraph two the defendant is agreeing to
22 waive any challenge under Johnson or its progeny that arson is
23 a crime of violence.

24 THE COURT: Okay.

25 MS. ARGENTIERI: And further, he is agreeing that if

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1 he does challenge his conviction, any statement that he makes
2 at this proceeding may be used against him at trial.

3 THE COURT: Okay.

4 Let's go through those one at a time, Mr. Asaro. Do
5 you know what the statute of limitations is?

6 THE DEFENDANT: (No response.)

7 THE COURT: You know what a statute of limitations
8 is?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that you are giving up
11 your right to assert the statute of limitations as a defense
12 to this charge?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. Do you understand that the
15 calculation of the sentencing guidelines is affected by
16 whether or not the crime to which you are pleading guilty is,
17 in fact, a crime of violence and that in this agreement you
18 are giving up your right to challenge whether or not the
19 charge arson is a crime of violence?

20 Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay. And do you also understand
23 that -- is it the last sentence of the same paragraph,
24 Ms. Argentieri?

25 MS. ARGENTIERI: Yes, Judge.

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1 THE COURT: Okay.

2 -- that you have agreed that if you do challenge the
3 validity of your conviction, any statements made at this
4 guilty plea proceeding may be used against you in connection
5 with that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. Anything else, Ms. Argentieri?

8 MS. ARGENTIERI: No, Judge.

9 THE COURT: Okay.

10 Do you have any questions that you want to ask me
11 about the charge against you or your rights or anything
12 relating to this proceeding?

13 THE DEFENDANT: No. May I have a moment, Your
14 Honor? I would like to talk --

15 THE COURT: Yes, go ahead.

16 (The defendant confers with Ms. Macedonio.)

17 MS. MACEDONIO: Your Honor, if I might. As I
18 stated, the parties have not stipulated as to what the
19 guideline calculation is going to be.

20 THE COURT: Right.

21 MS. MACEDONIO: And so what I have explained to
22 Mr. Asaro is that until the Court receives the probation
23 report and all the arguments from the parties, that Your Honor
24 will not be able to make your own calculation as to what the
25 appropriate guideline range would be --

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1 THE COURT: I hope I just said that.

2 MS. MACEDONIO: I just want to make sure his
3 concerns are addressed.

4 -- and that, thereafter, the Court would address the
5 3553(a) factors and then, ultimately, determine what the
6 appropriate sentence was going to be. So when Mr. Asaro asks
7 me what is the absolute calculation of his guidelines I can't
8 give him an answer to that --

9 THE COURT: Absolutely.

10 MS. MACEDONIO: -- because there are things that we
11 are still litigating.

12 THE COURT: All of that really is going to be open
13 until the time of your sentencing.

14 Do you understand?

15 THE DEFENDANT: Okay, Your Honor, thank you.

16 THE COURT: Are you ready to enter a plea?

17 THE DEFENDANT: Yes.

18 THE COURT: Ms. Macedonio, do you know of any reason
19 why your client should not plead guilty to the charge?

20 MS. MACEDONIO: No, Your Honor, I do not.

21 THE COURT: Okay.

22 Mr. Asaro, how do you plead to the charge in the
23 Superseding Information, do you plead not guilty or do you
24 plead guilty?

25 THE DEFENDANT: Guilty, Your Honor.

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1 THE COURT: Are you making the guilty plea
2 voluntarily and of your own free will?

3 THE DEFENDANT: Yes, I am.

4 THE COURT: Has anyone threatened, forced or coerced
5 you in any way to plead guilty?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Other than the agreements with the
8 government that are set forth in this written agreement that
9 has been marked as Government Exhibit Number 1 in your case,
10 has anyone made any promise to you that has caused you to
11 plead guilty?

12 THE DEFENDANT: No.

13 THE COURT: Has anyone made any promise to you as to
14 what your sentence will be?

15 THE DEFENDANT: No.

16 THE COURT: Did you on sometime between April 1st
17 and 4th of 2012 in this district, that is the Eastern District
18 of New York, and elsewhere, together with another person,
19 knowingly and intentionally use what is called in the
20 Information as a facility in interstate commerce, but probably
21 turns out to be a telephone, intending to promote and
22 facilitate the carrying on of an unlawful activity,
23 specifically arson in violation of New York law; and
24 thereafter, perform and attempt to perform a crime of
25 violence, which is arson, affecting interstate commerce in

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1 violation of federal law? Did you do that?

2 THE DEFENDANT: Hold on a minute.

3 THE COURT: That is fine.

4 (Defendant confers with Ms. Macedonio.)

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. You tell me in your own words
7 what you did that makes you think you are guilty to this.

8 THE DEFENDANT: In or about April --

9 THE COURT: Would you speak directly into the
10 microphone?

11 THE DEFENDANT: Oh.

12 THE COURT: Thank you.

13 THE DEFENDANT: In or about April 2012 in Queens,
14 New York I used a phone in interstate commerce to promote an
15 arson. Thereafter, that arson was performed. Specifically on
16 April 4th, 2012 another person burned the car at my request to
17 further the arson.

18 The only thing I would like to add to that, Your
19 Honor, is that I don't know the other person. I never have
20 met him.

21 THE COURT: But did you make arrangements for that
22 other person to commit the arson?

23 THE DEFENDANT: No, not with him, only --

24 THE COURT: Did you ask someone to make arrangements
25 for the other person --

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1 THE DEFENDANT: Yes.

2 THE COURT: -- to commit the arson?

3 THE DEFENDANT: Yes. I didn't, I asked him to take
4 care of it.

5 THE COURT: You asked another person to take care of
6 it?

7 THE DEFENDANT: Yes.

8 THE COURT: And by take care of it, you meant to
9 find someone to commit that particular arson?

10 THE DEFENDANT: No, Your Honor. The person that was
11 gonna testify against me --

12 MS. MACEDONIO: Can I have a moment, Judge?

13 (Ms. Macedonio confers with the defendant.)

14 MS. MACEDONIO: Judge, go ahead.

15 THE DEFENDANT: Your Honor, I made arrangements for
16 someone -- with this person to take care of it and it was
17 done.

18 THE COURT: So you made arrangements with a person
19 to either himself or find someone to commit the arson that you
20 wanted committed and that arson was, in fact, committed?

21 THE DEFENDANT: I asked one person, him, him to take
22 care of it.

23 THE COURT: I did not ask how many people you asked.

24 THE DEFENDANT: Oh, all right.

25 THE COURT: I want to go through it with you again.

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1 THE DEFENDANT: Okay.

2 THE COURT: You made arrangements with one person --

3 THE DEFENDANT: Yes.

4 THE COURT: -- to commit an arson?

5 THE DEFENDANT: Yes.

6 THE COURT: And it was either you made arrangements
7 with that person that he would either commit it himself or
8 find someone else to commit the arson that you wanted to be
9 committed, is that right?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And, in fact, he did?

12 THE DEFENDANT: Yes.

13 THE COURT: Someone did commit the arson --

14 THE DEFENDANT: Yes.

15 THE COURT: -- that you wanted to be committed?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay.

18 Anything further?

19 MS. ARGENTIERI: Yes, Judge. Can we have a second?

20 (Pause.)

21 MS. ARGENTIERI: So, Judge, I think Mr. Asaro
22 already said this in his initial allocution, I just want it to
23 be clear that he used a telephone --

24 THE COURT: Right.

25 MS. ARGENTIERI: -- in interstate commerce to

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1 further the arson.

2 THE COURT: To further the arson. As I understand
3 it, he used the telephone to contact a particular individual
4 to make arrangements to commit the arson. Is that right?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. And the arson was an arson of a
7 motor vehicle?

8 THE DEFENDANT: Yes, Your Honor.

9 MS. ARGENTIERI: And I just want to make clear that
10 the car was burned by fire.

11 THE COURT: Was the car, in fact, burned by fire?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Anything else?

14 MS. ARGENTIERI: And, Judge, I don't think that he
15 has to allocute to this, but merely agree that at trial the
16 government would be prepared to show that the vehicle that was
17 burned was in and effecting commerce, it was a leased vehicle?

18 THE COURT: Based on the information that you have
19 given to me, I find that you are acting voluntarily, that you
20 fully understand your rights and the consequences of your
21 plea, and that there is a factual basis for your plea and I,
22 therefore, accept your guilty plea to the charge in the
23 Superseding Information.

24 THE DEFENDANT: Thank you are, Your Honor.

25 THE COURTROOM DEPUTY: Sentencing set for October

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1 24th at 11 a.m.

2 MS. MACEDONIO: Your Honor, can we ask for an
3 expedited sentencing in this matter? Nicole?

4 MS. ARGENTIERI: Yes, agreed.

5 THE COURT: I do not have any problem with that, it
6 is a question of how quickly the Probation Department can do
7 it. So we will request the Probation Department to do that
8 and as soon as the report is out.

9 MS. ARGENTIERI: What was the date that Mr. LaSalle
10 gave?

11 THE COURTROOM DEPUTY: October 24th at 11 a.m.

12 MS. MACEDONIO: And will that prompt the Probation
13 Department to prepare --

14 THE COURTROOM DEPUTY: It is just the control date.

15 MS. MACEDONIO: Okay.

16 THE COURT: I do not see any reason why the
17 Probation Department cannot do it with some speed, so --

18 MS. ARGENTIERI: We are happy to facilitate that on
19 our end if we can.

20 MS. MACEDONIO: And we will, as well. Your Honor,
21 may I have a copy of the transcript of today's proceedings?

22 THE COURT: Yes.

23 MS. MACEDONIO: Thank you, Judge.

24 THE COURT: Okay.

25 (Matter adjourned.)

SAM OCR RMR CRR RPR